IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21/08/2003

CORAM

THE HONOURABLE MR. JUSTICE K.P.SIVASUBRAMANIAM

WRIT PETITION No.5747 OF 2003
and
W.P.M.P.Nos.7400 and 7401 OF 2003
and
W.V.M.P.Nos.453 and 454 of 2003

T.S.Karneeswaran .. Petitioner.

-Vs-

1. Indian Oil Corporation Ltd.,
represented by its General Manager,
Regional Office (Southern Region),
Indian Oil Bhavan,
139, Nungambakkam High Road,
Chennai - 600 034.

2. T.S.Rangarajan

3. S.Mohanraj

4. The Deputy Commissioner of Labour-I,
(Registrar of Trade Unions),
D.M.S. Complex,
Teynampet,
Chennai -6. ... Respondents.

Petition filed under Article 226 of the Constitution of India
for the issue of a writ of mandamus as stated therein.

For petitioner : Mr.N.R.Chandran,
Advocate-General for
M/s.K.Rajsekar and R.Natarajan.

For respondents 2 to 3 : Mr.K.Chandru, Senior Counsel for
Mr.K.M.Ramesh.

For 4th respondent : Miss.V.Velumani,
Addl. Govt. Pleader.

:ORDER

The petitioner, an employee of the first respondent/Indian Oil Corporation Ltd., seeks for the issue of a writ of mandamus directing the fourth respondent to verify the accounts of Indian Oil Employees Union, (Southern Region), a registered trade union and to take appropriate action in accordance with law for irregularities committed by the second and third respondents.

2. The petitioner claims to be the Working President of the Union having put about 30 years of service in the Corporation. He states that he has held many important positions in the Union. He has also served as Vice-President of the Union for several years. The trade Union was registered under the Trade Union Act. There are about 2500 employees comprised in four southern States. The Union has its own constitution and Bylaws. There are also provisions vesting powers on the respective office-bearers as well as the modalities of work for each of them. The petitioner refers to Clause 20 dealing with the utilisation of the funds of the Union. The petitioner contends that without the approval of the Central Executive Committee or the General Body, the second respondent cannot unilaterally spend any money which was not provided for in Rules 20, 21 and 22. However, according to the petitioner, in spite of the said Rule, the second respondent was acting in blatant violation of the Rules time and again spending huge amounts for the reasons best known to him. Thus, the second respondent has misused his powers and in total disregard of the Rules, has spent huge sums of money. The petitioner has also filed a typed-set of papers with a statement of accounts. It is further stated that the third respondent being the Treasurer of the Union, is duty bound to maintain accounts properly and he has also failed in his duties.

3. The petitioner further states that when the second respondent was questioned by the petitioner, and others, he did not even care to reply. A letter dated 1.2.2003 was addressed to the second respondent by a large number of office-bearers including some of the members of the Committee. The second respondent had merely denied the allegations and contended that he has not contravened the Rules. However, after admitting the withdrawal of the amounts as alleged by the complainants, another letter was addressed to the petitioner on 5.2.2003. However, the second respondent had not chosen to reply to the averments raised by the petitioner. Therefore, according to the petitioner, both second and third respondents are suspected to be involved in financial irregularities. When confronted with the said complaints, the second respondent in order to escape from the clutches of law, has now hurriedly conveyed a meeting of the Central Executive Committee. The Agenda for the meeting includes review of the Union activities and presentation of Income and Expenditure statement for the period 1 .1.2002 to 31.12.2002. According to the petitioner only in order to justify his illegal action, the meeting has been called for by the second respondent. According to the petitioner, if such accounts are finalised and approved in the meeting, the second respondent may claim that he cannot be proceeded against. The petitioner has therefore, come forward with the above writ petition also with a prayer for interim relief restraining the respondents from taking up Item No.2 in the Agenda namely, presentation of the Income and Expenditure Statement.

4. In the counter affidavit filed by the second respondent, the various allegations raised in the affidavit in support of the writ petition have been denied and that the writ petition is not maintainable either in law or on facts. Writ will not lie against a Trade union. The petitioner having made the prayer to direct the Registrar of Trade Union to verify the accounts, cannot seek an interim order against the second respondent. The Registrar of Trade Union is none else than the Deputy commissioner of Labour, who has been allocated with multi various functions under different statutes. Therefore, to expect the Deputy Commissioner of Labour to look into the letter of the writ petitioner, and to take appropriate action within a short time frame, was not humanly possible. Therefore, the letter sent by the writ petitioner was only an empty formality and the petitioner has immediately rushed to this Court for the issue of a writ of mandamus.

5. As regards the alleged huge expenditure of the funds, the second respondent states that the petitioner has a proper forum to express his views and objections regarding the utilisation of the funds of the Union. The issue has already been raised by the petitioner and respondents 1 and 2 and the petitioner to inspect the accounts in terms of Clause 9 of the Bylaws. Account Books are open to inspection on all working days between working hours. The writ petitioner without having inspected the account books till date, has come forward to this Court.

6. The second respondent has also denied the allegations against him in a detailed manner in the counter affidavit and it is not necessary to deal with the said contentions considering the manner of disposal of the writ petition.

7. By notice dated 12.2.2003, Central Executive Committee Meeting has been convened to be held on 22.2.2003 at 11.00 A.M. There are about 47 C.E.C. members coming from the four southern States and the respondent has to make all arrangements for the boarding and lodging of the members who come from the outstations. Therefore, there is no reason or justification for restraining the respondents from conducting the meeting.

8. It is further submitted that Annual Accounts of the Union would be first placed before the Central Executive Committee and after its approval, it would be submitted for audit and after the completion of the audit, Return in Form-E will be submitted to the Registrar of the Trade Unions on or before 30th April every year as required under Section 28 of the Trade Union Act, 1926 which is the usual practice which the Union has been following ever since its inception.

9. It is further submitted that the prayer in the writ petition was to direct the Registrar of the Trade Unions to verify the accounts of the Union. The respondents are yet to submit the accounts to the Registrar and only when the accounts are submitted, the Registrar can verify and scrutinise the accounts. Therefore, the prayer in the writ petition was

premature and not maintainable. In spite of the fact that the accounts were open for inspection, the writ petitioner has not chosen to do so. His real intention was to create problems to the second respondent in the garb of asking for accounts. The petitioner wants to settle his personal vendetta through the writ petition.

10. In the reply filed by the petitioner, apart from denying the contentions raised in the counter affidavit, the petitioner has dealt with in detail, the various particulars relating to the accounts. After giving details of the various items of expenditure, the petitioner has contended that the accounts have not been properly maintained and that the expenditure have been inflated. It is further stated that the office-bearers have been utilising the funds for their personal benefits. In short, the petitioner contends that the office-bearers have been misusing the funds. However, having regard to the nature of the disposal of the writ petition, I do not propose to go into the merits of the allegations by the petitioner as regards the accounts maintained by the office-bearers.

11. Mr.N.R.Chandran, learned Advocate-General appearing for the petitioner dealt with some of the items of the expenditure of the Union and contended that such expenditure was uncalled for by a trade Union and according to him, the funds of the Union were being frittered and squandered away and wrongly utilised at the whims and fancies of respondents 2 and 3. Even a single member has a right to question the expending of the moneys belonging to the Union. The efforts of the petitioner did not yield any result and hence the petitioner was forced to approach this Court. In the calling for the meetings also, there was violation of the Bylaws. Section 28 of the Trade Union Act provides for the submission of the accounts and hence it would be within the powers of the Registrar to enquire and scrutinise the financial management of the Union. Learned Advocate-General also refers to the judgment of the Nagpur Bench of Bombay High Court in M.RAPOSO v. H.M.BHANDARKAR (1994 -II L.L.N., 905) which would be dealt with later.

12. Mr.K.Chandru, learned Senior Counsel appearing for respondents 2 and 3 contends that the very writ petition filed by the petitioner was an abuse of process of Court. The basic object was only to create hurdles to the conduct of the meeting which was scheduled to be conducted on 20.02.2003 and the writ petition itself was moved on 17.02 .2003. The prayer in the writ petition namely, to direct the Registrar to verify the accounts and to take appropriate action, has no nexus to the interim relief prayed for in W.P.M.P.No.7400 of 2003 from taking up Item No.2 in the Agenda of the notice dated 12.2.2003 relating tothe presentation of Income and Expenditure statement. The prayer in the writ petition has no relevance to the prayer in the miscellaneous petition and hence the entire object of the petitioner was only to forestall a legally convened and valid meeting. Notices of the meeting have been sent to several persons, many of them coming down from outstations and thus the last minute action of the petitioner was totally unwarranted. On the issues which were raised regarding the expenditure, learned Senior Counsel contends that there was absolutely no basis for the various allegations raised by the petitioner. There was no unwanted nor exorbitant expenditure under any item. The Union was prepared to

face any enquiry and the allegations by the petitioner were malicious.

13.Learned Senior Counsel also contends that the Union was a necessary party and the petitioner has not impleaded the Union as a party. Learned Senior Counsel contends that without impleading the Union no relief can be granted. Reliance is placed on the judgment of a Division Bench of this Court in PETER,A & 8 OTHERS v. ROYAPPAN & 7 OTHERS (1993-2-L.W., 141). That judgment arose out of a suit filed against a registered society running an educational institution for a declaration that the first defendant was not entitled to hold the office. The suit was however, filed without impleading the society and it was held that the Society had to be impleaded.

14. Reference was also made to the judgment of learned single Judge of Kerala High Court, in CHEMOSYN (P) LTD. v. KERALA M & S.R.ASSOCN. (1988-I-L.L.N., 640) holding that a Trade Union registered under the Act was only a body corporate and not a statutory body and not amenable to writ jurisdiction.

15. In MANIK RAO v. DEPUTY COMMISSIONER OF LABOUR (1979 The Andhra Weekly Reporter, 394), Jeevan Reddy,J. as he then was held that the existence of Rules of the Trade Union was only a pre-condition for registration of the Trade Union. But the Rules of the Trade Union are not made under any Act and hence the Rules of a Trade Union cannot be treated as statutory Rules. Therefore, the action of the Commissioner of Labour holding the election under the said Rules was not amenable to writ jurisdiction.

16. As regards the role which the Registrar under the Trade Unions Act can play, reference is made to a judgment of this Court in R. MURUGESAN v. UNION TERRITORYOF PONDICHERRY (1976 (II) L.L.J., 435). It was held that any enquiry made by the Registrar under the provisions of the Act shall be only administrative in character and would not finally adjudicate on the claims of the parties and that any dispute concerning the election has to be fought only before the appropriate forum and that the decision of the Registrar was no bar to any further independent legal proceedings.

17. On the strength of the above decisions and on his analysis of the provisions of the Act, Mr.K.Chandru, learned Senior Counsel for respondents 2 and 3, contends that a Trade Union registered under the Act is nothing more than private organisation and when the activity of the administration is controlled by a general body and if the accounts submitted by the persons in charge of administration are accepted by the general body, it is not open to a single member who for his personal reasons seeks to question such action. Accounts are being submitted with the Registrar periodically without any default as required under Section 28 of the Trade Unions Act. Therefore, it is not open to the petitioner to seek for any relief under provisions of the Act.

18. Learned Advocate-General in his reply submits, that the contentions of the respondents as though they are beyond scrutiny of any of the statutory authorities, cannot be upheld. Section 28 contemplates power of

the Registrar to scrutinise the accounts as well as to call for any necessary particulars including the power to inspect the Account Books, Registers, etc. Therefore, it has to be held that the Registrar will have the power to pass appropriate orders in the event of finding that the accounts were not properly maintained or that the expenditures were not properly incurred.

19. I have considered the submissions of both sides. The essence of the allegation by the petitioner is that the Trade Union administered by respondents 2 and 3 is mismanaged and the funds of the Union are spent for unnecessary and ulterior purposes due to the improper management by respondents 2 and 3. Therefore, the petitioner seeks for a direction to the Registrar/the fourth respondent, for verification of the accounts and for taking appropriate action in accordance with law for any irregularities committed by respondents 2 and 3.

20. The prayer for verification of the accounts presents no difficulty in terms of Section 28. But whether any follow up of action can be taken by the fourth respondent, has to be considered. Section 28 is as follows:

"28. Returns

(1) There shall be sent annually to the Registrar,on or before such date as may be prescribed, a general statement, audited in the prescribed manner, of all receipts and expenditure of every registered trade union during the year ending on the 31st day of (December) next preceding such prescribed date, and of the assets and liabilities of the trade union existing on such 31st day of (December). The statement shall be prepared in such form and shall comprise such particulars as may be prescribed.

(2) Together with the general statement there shall be sent to the Registrar a statement showing changes of (office-bearers) made by the trade union during the year to which the general statement refers together also with a copy of the rules of the trade union corrected up to the date of the despatch thereof to the Registrar.

(3) A copy of every alteration made in the rules of a registered trade union shall be sent to the Registrar within fifteen days of the making of the alteration.

(4) For the purpose of examining the documents referred to in subsections (1), (2) and (3), the Registrar, or any officer authorised by him by general or special order, may at all reasonable times, inspect the certificate of registration, account books, registers, and other documents, relating to a trade union, at its registered office or may require their production at such place as he may specify in this behalf, but no such place shall be at a distance of more than ten miles from the registered office of a trade union."

21. The Act legislated about 78 years back, had not received the attention of the law makers so as to be updated with the changing trends and the Governmental control over private organisation/societies. The affairs of such societies were earlier considered to be private affairs and into which the Government cannot seek to exercise any serious control. With the growth and enlargement of the activities of such private organisations and societies affecting the interest of several individuals and public and the funds of such

organisations being collected by contribution from large section of the public, the need for Governmental control and check over the activities of such organisations had become accepted and recognised by passing either amendments or new Acts replacing the old and outmoded Acts. The Tamil Nadu Societies and Registration Act, 1975 is one such example replacing the Societies Registration Act, 1860 and incorporating the provisions by which the societies are brought under the supervisory control of the Registrar, inclusive of the power to order inspection, conduct enquiry and order winding up or removal of the defunct societies etc. An Appellate Authority is also prescribed under the Act. But such provisions are not available under the Trade Union Act and there has been no updating of the provisions of the Act. However, according to learned Advocate-General having regard to Section 28 and especially sub-section (4) which visualises supervisory control of the Registrar, the Court ought to adopt purposive construction and interpretation of the said provision and to direct the Registrar to take further action.

22. Apart from the decisions cited above in the context of the Trade Union Act which hold that any decision by the Registrar would be only administrative in character and that no powers of enquiry is contemplated in favour of the Registrar, no other precedent has been cited before me, to vest such power on the Registrar. The provisions of the Act are thus very outdated. There is no power to cancel the registration except where the certificate is obtained by fraud, mistake nor any power to take action in the event of mismanagement or improper utilisation of the funds.

23. But I do not think that this Court would be powerless to direct the Registrar to hold an enquiry in the face of serious allegations. It has to be borne in mind that Section 15 of the Act specifies the objects for which the general funds of the Union may be spent. The Section prohibits spending of the funds for any purpose other than the specified objects. Under Section 16, the trade union is also enabled to constitute a separate fund from the contributions separately levied for or made available to that fund for the promotion of the civic and political interests of its members. Therefore, it cannot be said that there can be no public scrutiny of the funds of the Union which are generated from a large section of the public. I am inclined to agree with the views expressed by V.S.Sirpurkar,J. in 1994 (II) L. L.N., 905) cited supra, that Section 15 of the Act was not an empty formality and that the directions contained therein have to be strictly followed. In that case, a complaint was made before the Industrial Court praying inter alia for freezing of the accounts of the Union pending arrangement for proper administration of affairs of the Union. On the dismissal of the complaint, the order of the Tribunal was held to be illegal and the High Court remanded the matter to the Industrial Tribunal for decision in the light of the observations.

24. It is not possible for this Court at this stage to hold as to whether there is any basis for the various allegations by the petitioner. At the same time, it would be idle to contend that an organisation, public or private could claim to be not amenable to any check or supervision or at least scrutiny by a competent authority and to go into the allegations and to submit a report. The report may have no statutory or

enforceable value, but at least could form the base for the aggrieved party to take any further action whichever is open to him including of approaching the Industrial Tribunal/Labour Court for any appropriate relief as held in 1994 (II)L.L.N., 905 cited supra. If the affairs of the trade Union are conducted properly, then the administrators of the trade Union need have no apprehension The office-bearers cannot claim any immunity from being enquired into. It is contended by the learned counsel for the respondents that there is no corresponding amendment to Section 28 as in the case of STATE OF BOMBAY, whereunder the complaint to the Industrial Court was made possible under Section 28(1A) and (2) of the Trade Union Act and that such a course is not open to the petitioner in this State. Even so, I am inclined to hold that the absence of a similar provision need not lead to the situation that the Registrar cannot even be asked to enquire into the complaints.

25. As regards the maintainability of the writ petition, it is too late in the day to contend that the powers of this Court under Article 226 of the Constitution of India which is exercisable even as against "any person" would not be available to be exercised over an institution which though characterised as a private institution actually deals with the funds contributed by hundreds of workers. The failure to submit the return is made punishable under Section 31 of the Act. Therefore, there is no reason why this Court in public interest cannot order an enquiry.

26. I do not also find any substance in the contention that the trade Union must have been made a party. The relief claimed is only as against respondents 2 and 3 as against their alleged commissions and omissions. No relief is claimed as against the Union and therefore, strict principles relating to necessary parties as under Code of Civil Procedure, need not be imported into the writ proceedings. The only need to observe is that no adverse order should be passed against a person who is not a party to the proceedings.

27. In the result, I am inclined to pass the following order:-

(I) The petitioner is directed to file a comprehensive representation before the Registrar (fourth respondent) containing all their imputations or allegations against any specific office-bearers of the Union with proper particulars within a period of two weeks from the date of receipt of a copy of this order, with a copy of the said representation being marked to respondents 2 and 3.

(II) On receipt of the said representation, the fourth respondent is directed to give notice to respondents 2 and 3 to which the said respondents will send their reply within two weeks there after, with a copy to the petitioner.

(III) After the reply is filed, the fourth respondent shall cause an inspection of the Account books and other relevant materials and hold an enquiry into the issues raised by the petitioner. I have designedly not gone into the merits of the allegations raised by the petitioner and replies of the respondents thereon, so that the Registrar would be able to bestow his individual attention and decide on the merits of the allegations and counter

allegations.

(IV) On completion of the enquiry, a copy of the report shall be sent to both parties. The said process may be completed within eight weeks after the fourth respondent receives the reply from respondents 2 and 3.

(V) It is thereafter open to the petitioner to take such further action as he may be advised.

28. The writ petition is disposed of with the above observations. No costs. Connected miscellaneous petitions are closed as unnecessary.

Index: Yes.
Internet : Yes.

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To

1. General Manager,
Indian Oil Corporation Ltd.,
Regional Office (Southern Region),
Indian Oil Bhavan,
139, Nungambakkam High Road,
Chennai - 600 034.

2. The Deputy Commissioner of Labour-I,
(Registrar of Trade Unions),
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